

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ISHMAEL ZAKAT TURNER,
Petitioner,

No. C 10-2921 MHP (pr)

ORDER OF DISMISSAL

v.

SAN QUENTIN WARDEN,
Respondent.

Ishmael Zakat Turner has filed a petition for writ of habeas corpus to challenge his conviction and sentence in San Mateo County Superior Court in 1992 for sexual assault in concert.

This is not Turner's first challenge to his 1992 conviction. He also challenged it in an action filed in 2008, Turner v. Ayers, C 08-1226 MHP, that was dismissed on July 18, 2008. He did not appeal from that dismissal.

A second or successive petition may not be filed in this court unless the petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this court to consider the petition. 28 U.S.C. § 2244(b)(3)(A).

Turner has not obtained the necessary order from the Ninth Circuit permitting him to file a second or successive petition. This court will not entertain a new petition from Turner until he first obtains permission from the Ninth Circuit to file such a petition. This action is **DISMISSED** without prejudice to Turner filing a petition in this court after he obtains the necessary order from the Ninth Circuit.

1 If Turner wants to attempt to obtain the necessary order from the Ninth Circuit, he
2 should very clearly mark the first page of his document as a "MOTION FOR ORDER
3 AUTHORIZING DISTRICT COURT TO CONSIDER SECOND OR SUCCESSIVE
4 PETITION PURSUANT TO 28 U.S.C. § 2244(b)(3)(A)" rather than labeling it as a habeas
5 petition because the Ninth Circuit clerk's office is apt to simply forward to this court any
6 document labeled as a habeas petition. He also should mail the motion to the Ninth Circuit
7 (at 95 Seventh Street, San Francisco, CA 94103), rather than to this court. In his motion to
8 the Ninth Circuit, he should explain how he meets the requirements of 28 U.S.C. § 2244(b).

9 The clerk shall close the file.

10 IT IS SO ORDERED.

11 DATED: July 9, 2010


Marilyn Hall Patel
United States District Judge